## TABLE OF CONTENTS


DISCUSSION

I — Page

Nothing in Title VII, either expressly of impliedly imposes any jurisdictional barrier to a suit brought under Section 1981 ..... 2

II

There is no important question of federal law involved ..... 3

CONCLUSION ..... 4

CERTIFICATE OF SERVICE ..... 5, 6

## TABLE OF CASES


| | Page |
|---|---|
| *Bulk Carriers v. Argueles*, 39 LW 4101 (1971) | 2 |
| *Caldwell v. National Brewing Co.*, 443 F.2d 1044 (5th Cir. 1971) | 2 |
| *Waters v. Wisconsin Steel Workers of International Harvesters Co.*, 427 F.2d 476 (7th Cir. 1970) | 2 |
| *Young v. International Telephone & Telegraph Co.*, 438 F.2d 757 (3d Cir. 1971) | 2 |


## STATUTES


| | |
|---|---|
| *Title VII of the Civil Rights Act of 1964*, 42 U.S.C. §2000-(e)-*et. seq.* | 3 |
| 42 U.S.C. §1981 | 4 |

# in the
# Supreme Court
# of the
# United States

OCTOBER TERM, 1971

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## NO. 71-269

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NATIONAL BREWING COMPANY,
*Petitioner,*

*vs.*

ROBERT CALDWELL, individually, and on behalf of all those similarly situated, and
BREWERY WORKERS LOCAL UNION NO. 185,
*Respondent,*

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**Motion in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for The Fifth Circuit**

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## REASONS WHY THE WRIT OF CERTIORARI SHOULD BE DENIED

### I

### NOTHING IN TITLE VII, EITHER EXPRESSLY OR IMPLIEDLY IMPOSES ANY JURISDICTIONAL BARRIER TO A SUIT BROUGHT UNDER SECTION 1981.

The petitioners argue that the decision of the Fifth Circuit in *Caldwell v. National Brewing Company*, 443 F.2d 1044 (5th Cir. 1971) is in direct conflict with *Waters v. Wisconsin Steel Workers of International Harvesters Co.*, 427 F.2d 476 (7th Cir. 1970). We believe the decision in *Caldwell*, as well as the decision in *Young v. International Telephone & Telegraph Co.*, 438 F.2d 757 (3d Cir. 1971) established the fact that there was nothing in Title VII; either expressly or impliedly that imposed any jurisdictional barrier to a suit brought under Section 1981. In addition, we believe this court's decision in the case of *Bulk Carriers v. Argueles*, 39 LW 4101 (1971) supports the rationale applied by the Third and Fifth Circuits.

The court in the case of *Waters v. Wisconsin Steel Workers of International Harvesters Co.*, held that a person may bypass the Equal Employment Opportunity Commission if he shows a reasonable excuse. It limited the right of direct assess in Federal Court because the Court felt Congress, if it had been aware of 42 U.S.C. §1981, would have limited such right. Such speculation is not permitted, *Bulk Carriers v. Argueles, supra.*

## II

## THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW INVOLVED.

The decision of the Court of Appeals does not render totally ineffective the procedures of the Civil Rights Act of 1964, 42 U.S.C. 2000(e) 5 *et. seq.* As noted by the court in both the *Young* and *Caldwell* cases, there are advantages to filing suit pursuant to Title VII, such as securing attorneys' fees and the appointment of counsel. Moreover, the decisions in the *Caldwell* and *Young* cases do not render ineffective the function of the Equal Employment Opportunity Commission. As noted in the *Caldwell* case, cited in the petitioner's brief at page 15 of the Appendix:

> The Third Circuit pointed to the provision in Title VII giving the district court power to stay any relief until the conciliatory procedures of Title VII are carried out (§2000-5(e)). Also, it was noted, conciliation efforts might better go forward in some circumstances while a preliminary injunction preserves the status quo for the aggrieved employee. And finally, we call the district court's attention to 42 U.S.C.A., §2000e-4(f)(4), giving the EEOC the power to "assist" the parties in the conciliatory process. The Third Circuit regards this power as exercisable even during the pendency of a §1981 lawsuit. We also agree with this. Such an approach melds the Title VII policy into the §1981 remedy.

## CONCLUSION

For the foregoing reasons, this petition for Writ of Certiorari should be denied since there is no important question of federal law involved and since it is clear that a person need not file a charge with the Equal Employment Opportunity Commission prior to bringing suit pursuant to 42 U.S.C. §1981.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, JON D. CAMINEZ, the attorney for ROBERT CALDWELL, individually and on behalf of all those similarly situated, Respondent; herein, and member of the Board of the Supreme Court of the United States, hereby certify that on the ____ day of November, 1971, I served copies of the foregoing Motion in Opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit on the several parties thereto as follows:

1. On the UNITED STATES, by mailing copies in a duly addressed envelope with airmail postage prepaid, to the Solicitor General, Department of Justice, Washington, D. C. 20530.

2. On EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Amicus Curiae in the Court of Appeals for the Fifth Circuit, by mailing copies in a duly addressed envelope with airmail postage prepaid, to Stanley P. Herbert, Esquire, its General Counsel, at the offices of the Commission, 1800 G Street, N. W., Washington, D. C. 20506.

3. On NATIONAL BREWING COMPANY, by mailing copies in a duly addressed envelope with first class postage prepaid, to its attorneys, Reginald L. Williams, Esq.; Bradford, Williams, McKay, Kimbrell, Hamann & Jennings, P.A., 9th Floor, Dade Federal Building, 101 East Flagler Street, Miami, Florida 33131.

*(Certificate of Service Continued on Next Page)*

4. On BREWERY WORKERS LOCAL UNION NO. 185, by mailing copies in a duly addressed envelope with first class postage prepaid, to its attorney, Alan E. Greenfield, Esq., Kovner, Manheimer, Greenfield & Cutler, 300 DuPont Plaza Center, Miami, Florida 33131.

It is further certified that all parties required to be served have been served.

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